
(2014) 08 BOM CK 0069

In the Bombay High Court

Case No : Criminal Appeal Nos. 410, 869 of 2011 and 927 of 2012

Manoj Mahadev Gawade

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 27-08-2014

Acts Referred:

Evidence Act, 1872 — Section 27

Penal Code, 1860 (IPC) — Section 120(B), 143, 146, 147, 148

Citation : (2014) 08 BOM CK 0069

Hon'ble Judges : V.K. Tahiramani, J;A.S. Gadkari, J

Bench : Division Bench

Advocate : Yug Mohit Chaudhary, Dashrath Gaikwad and Kuldip S. Patil,
Advocate for the Appellant; V.R. Bhonsale, Addl. P.P, Advocate for the Respondent

Final Decision : Allowed

Judgement

A.S. Gadkari, J.—The Appellants/original accused Nos. 1 to 4 along with two other accused persons viz. original accused Nos. 5 and 6 i.e. Mangal Mahadev Gavade and Suresh Dattu Gavade were tried for the offences punishable under Sections 143, 146, 147, 148, 149, 452, 302, 201 and 120(B) of the Indian Penal Code by the District Judge-3 and Additional Sessions Judge, Sangli in Sessions Case No. 215 of 2006. The Appellants/original accused Nos. 1 to 4 are convicted by the District Judge-3 and Additional Sessions Judge, Sangli by its impugned judgment and order dated 11th April 2011 in Sessions Case No. 215 of 2006 for the offence punishable u/s 302 read with Section 120(B) of the Indian Penal Code and have been sentenced to undergo imprisonment for life and to pay a fine of Rs. 5,000/- each, in default of payment of fine to suffer rigorous imprisonment for two years. The Appellants i.e. original accused Nos. 1 to 4 have been further convicted u/s 120(B) of the Indian Penal Code and are sentenced to suffer rigorous imprisonment for two years and to pay a fine of Rs. 5,000/- each, in default of payment of fine to suffer further rigorous imprisonment for six months. The Trial Court has acquitted the Appellants i.e. original accused Nos. 1 to 4 from the offences punishable under Sections 143, 146, 147, 148, 149 and

201 of the Indian Penal Code. The Trial Court has acquitted the original accused Nos. 5 and 6 i.e. Mangal Mahadev Gavade and Suresh Dattu Gavade respectively from all the offences charged against them i.e. from the offences under Sections 143, 146, 147, 148, 149, 452, 302, 201 and 120(B) of the Indian Penal Code. The Appellants have preferred the aforesaid Appeals thereby impugning the judgment and order dated 11th April 2011 passed by the District Judge-3 and Additional Sessions Judge, Sangli in Sessions Case No. 215 of 2006. In the present Judgment, the Appellants are termed with reference to their original accused numbers for preciseness in the matter.

2. The facts which are enumerated from the record can briefly be stated as under :

i) P.W. 22-Suhas Nadgouda was attached to Miraj Rural Police Station as Assistant Police Inspector from November 2004 to May 2007. That in the morning of 15th June 2006 at about 7.30 a.m. Police Head Constable Kamble informed him via telephone that despite of giving a call in the house of Balu Gavade which is situated in Gavade Vasti in village Arag, nobody is responding from the house. Police Head Constable Kamble further informed P.W. 22-API Suhas Nadgouda that two tiles (kawli) from roof of the house of Babu Gavade are also found to be removed which has created suspicion in the mind of Police Head Constable Kamble. P.W. 22-API Nadgouda along with his staff immediately proceeded to Gavade Vasti at the house of Balu Gavade. After reaching to the house of Balu Gavade, P.W. 22-API Nadgouda asked Assistant Sub Inspector Koli to climb on the roof of the said house and to see what has happened inside through the opening from where the tiles of the roof were removed. ASI Koli climbed on the roof and saw through the opening and informed P.W. 22-API Nadgouda that six persons inside the house are lying in a pool of blood.

ii) Under the directions of P.W. 22-API Nadgouda, ASI Koli entered into the said house from the roof and opened the main door from inside. P.W. 22-API Nadgouda and his staff thereafter entered into the said house of Balu Gavade and inspected the spot of incident. They saw dead bodies of six persons were lying in the room. Out of the said six persons, one person was a boy of about 15 years of age and one person was a girl of about 14 years of age. P.W. 22-API Nadgouda thereafter called one person by name Suresh Gavade from the said locality. Suresh Gavade identified all the six dead bodies and disclosed the names of the deceased persons as (i) Balu Amanna Gavade; (ii) Shirmabai Balu Gavade; (iii) Sunil Balu Gavade; (iv) Chaya alias Chakuli Balu Gavade; (v) Jayashree Amol Waghmode and (vi) Shantabai Ananda Gavade. API-Nadgouda noticed that there were injuries on the head of all the said six persons and the bodies were lying in a pool of blood. API-Nadgouda thereafter called a photographer and photographs of the dead bodies were taken. ASI Koli on behalf of the State lodged a complaint which was treated as the First Information Report. API-Nadgouda sent the said complaint to Miraj Rural Police Station for registration of crime through Police Constable More. The police station officer of Miraj Rural Police Station informed

P.W. 22-API Nadgouda that he has registered Crime No. 95 of 2006 u/s 302 of the Indian Penal Code. The said complaint is at Exhibit 45. P.W. 22-API Nadgouda thereafter called two panch witnesses in whose presence the inquest panchanama of the said six dead bodies was recorded. The inquest panchanamas are at Exhibit Nos. 47 to 52 respectively.

iii) API Nadgouda thereafter referred all the six dead bodies for postmortem examination to Miraj Civil Hospital through Police Constables Holkar, Jadhav and Chaman Shaikh. API Nadgouda thereafter called two panch witnesses viz. Santosh Desai (P.W. 3) and Mahalappa Karbu at the spot of incident and in their presence he prepared a detailed incident spot panchanama and seized the articles which were found at the said spot. The articles were beddings, empty gunny bags, a piece of wood, right leg slipper of Paragon company, blood mixed with soil, pieces of bangle, two wooden logs having length of 2.3 ft. and 1.9 ft. respectively having bloodstains on it and a hanker chief. The spot of incident panchanama is at Exhibit 68. The wooden logs are Articles A-(1) and A-(2). The slipper of Paragon company which was found on the spot of incident is Article A-14.

iv) During the course of investigation, API Nadgouda recorded the statement of 23 witnesses. The concerned Police Constables produced the clothes which were on the person of the dead bodies of the deceased. The said clothes were seized by preparing separate panchanama. API Nadgouda sought report from the Electricity Supply Board about the time of the supply of electricity and its load shedding in the said Gavade Vasti. During the course of investigation, it was revealed to API Nadgouda that the Appellants along with other two acquitted accused persons have committed the said crime and therefore he arrested the original accused Nos. 1 to 5 on 18th June 2006. He also seized the clothes which were on the person of the Appellants, after effecting five separate seizure panchanamas dated 18th June 2006. The said panchanamas of seizure of clothes of the Appellants are at Exhibits 119 to 123 on record. On 21st June 2006 API Nadgouda took search of the house of accused No. 4-Mahadev Gavade and in the said house search one plastic bag containing thorny seeds of Dhattura (Argemone Mexicana) was found. Similarly one slipper of Paragon company of the left leg having some bloodstains, a towel having blue lining, stained with blood and a plastic bag containing a half filled white colour pesticide powder in a pack was found at the said spot. The said panchanama is at Exhibit 127. The Paragon slipper and the towel are Articles A-28 and A-57 respectively. Dhattura seeds found in the house of Appellant Mahadev were like black beads and Dhattura fruit was having green colour with thorns.

v) During the course of investigation API Nadgouda took the photographs of the impression of foot prints which were found in the house of deceased Balu Gavade through the photographer B.R. Patil. That on 21st June 2006 accused No. 1 Malubai when was in police custody expressed her willingness in presence of two panch witnesses to show the tree of Dhattura from which its fruits and seeds

were obtained to use it as a sedative for the deceased persons. Accordingly the memorandum statement was recorded which is at Exhibit 74. In pursuance of the memorandum statement Appellant/accused No. 1-Malubai led the police party to the house of accused No. 4-Mahadev Gavade. She thereafter took them behind the house of Mahadev and in the open land she pointed out two Dhattura trees from which Dhattura fruits were plucked. Accordingly panchanama u/s 27 was effected by API Nadgouda which is at Exhibit 75. That API Nadgouda thereafter sent the seized articles to the Chemical Analyser for the purpose of examination. During the course of investigation API Nadgouda, after completing the necessary legal formalities took accused Malubai and Manoj to Forensic Science Laboratory, Bangalore and the lie detector and Narco analysis tests were performed there between 24th July 2006 to 29th July 2006. That on 31st August 2006 API Nadgouda recorded the supplementary statement of P.W. 10-Ashok Gavade, to whom accused No. 4-Mahadev gave an extra-judicial confession about the commission of the crime. Accused No. 4-Mahadev had sent a post-card to P.W. 10-Ashok Gavade thereby calling him to meet accused No. 4-Mahadev in jail.

vi) API Nadgouda-P.W. 22 after collecting all the necessary documents from the various agencies and after completing the investigation submitted a charge-sheet originally against six accused persons on 14th September 2006 under Sections 302, 201, 452, 120(B), 143, 146, 147, 148, 149 of the Indian Penal Code in the Court of competent jurisdiction.

3. The Judicial Magistrate First Class committed the said case to the Court of Sessions and after its committal the Trial Court framed charge below Exhibit 25 against the Appellants. The said charge was read over and explained to them in vernacular language to which they pleaded not guilty and claimed to be tried. The defence of the Appellants was of total denial and false implication. The Trial Court after recording the evidence and after hearing the parties to the said Sessions Case was pleased to convict original accused Nos. 1 to 4 i.e. the Appellants herein and has acquitted the original accused Nos. 5 and 6 i.e. Smt. Mangal Mahadev Gavade and Suresh Dattu Gavade respectively as stated herein above.

4. Heard Dr. Yug Mohit Chaudhary, Mr. Kuldip S. Patil, learned advocates for the Appellants and Smt. V.R. Bhonsale, learned APP for the State. The learned counsel appearing for the Appellants submitted that the prosecution has utterly failed to prove the motive behind the entire crime. They submitted that the prosecution has further failed to establish the link and/or any connection between the actual administration of the powder of Dhattura seeds i.e. (Argemone Mexicana), which according to the prosecution was administered to the deceased persons through tea as a sedative. They further submitted that there is no evidence of last seen together or any other evidence which is legally admissible which would link the Appellants with the present crime. In other words, the evidence adduced by the prosecution cannot be termed as legally

admissible evidence as against the Appellants. They therefore urged before this Court that in the absence of any legally admissible evidence the Appellants may be acquitted from the charges framed against them. The learned APP Smt. Bhonsale while supporting the impugned judgment and order vehemently opposed the submissions of the Appellants and prayed to this Court that the conviction and sentence awarded by the Trial Court by the impugned judgment may be upheld.

5. In order to effectively deal with the submissions advanced before us by learned counsel for the Appellants and the learned APP, it would be useful to refer to the evidence in brief, of the prosecution witnesses.

6. P.W. 1-Subhash Koli who is the complainant in the present crime was attached to Miraj Rural Police Station on 15th June 2006 as Assistant Sub-Inspector. He was deputed to Mhaishal outpost and Arag Bit was within his jurisdiction. That on 15th June 2006, when he was at his residence, he received a telephone call from Police Head Constable Kamble in the morning at about 7.00 a.m. The said Police Head Constable Kamble informed P.W. 1-Subhash Koli that he had received a phone call from Ashok Jatkar (P.W. 9) from village Arag. P.W. 1-Subhash Koli was told that in the locality known as Gavade Vasti the roof tiles of the house of Balu Gavade were removed and some untoward incident has been occurred. It was requested to P.W. 1-Subhash Koli to immediately remain present in the police station. He immediately reached to the Miraj Rural Police Station. P.W. 22-API Nadgouda was present there. They along with the other staff went to Gavade Vasti of village Arag and reached there at about 7.45 a.m. After reaching the spot they saw the house of Balu Gavade was closed from inside and the roof tiles, at two places were removed. P.W. 1-Subhash Koli thereafter looked inside the house from the Northern side from where the roof tiles were removed. He noticed the bodies and the blood on the flooring of the said house. P.W. 1-Subhash Koli then entered in the said room from the said open space from where the tiles were removed and opened the door from inside by removing chain. He saw six dead bodies in the said room. The said dead bodies were in injured condition and there were bloodstains on the floor in the said room. In order to identify those bodies Suresh Gavade (original accused No. 6) from the Gavade Vasti locality was called. He identified those dead bodies as of (i) Balu Amanna Gavade; (ii) Shirmabai Balu Gavade-wife of Balu Gavade; (iii) Sunil Balu Gavade-son of Balu Gavade; (iv) Chhaya alias Chakuli Balu Gavade-daughter of Balu Gavade; (v) Jayashree Amol Waghmode-married daughter of Balu Gavade and (vi) Shantabai Ananda Gavade. He noticed injuries on the head of all the six bodies. P.W. 1-Subhash Koli thereafter lodged the First Information Report which is at Exhibit 45.

i) In the cross examination by Malubai (accused No. 1) an admission has been elicited wherein P.W. 1-Subhash Koli has admitted that, "when we came near to the door of the said house, we did not notice any blood near to the door of the said house". In the cross examination on behalf of accused Nos. 2 and 4, P.W. 1-

Subhash Koli has given an admission that when he went to the spot, several people were found gathered there. He has further admitted that on the spot P.W. 22-API Nadgouda made enquiry with some people who were present there and as they did not receive any information about the assailants, a report was filed against unknown persons. He has further admitted that one Diwate was Police Patil of village Shinde Wadi and the charge of village Arag was with him. The First Information Report which is at Exhibit 45 has been proved by this witness.

7. P.W. 2 is Rajaram Mane, Junior Engineer of Maharashtra State Electricity Board, Taluka Miraj, District Sangli. This witness in his testimony has stated that he was serving as a Junior Engineer with M.S.E.B. and electricity supply to village Arag and Laxmi Wadi was provided from the sub-station Bedag. He has stated that on 15th June 2006 in the night from 12.00 to 6.00 p.m. on the next day the electric supply to Gavade Vasti was continued and he accordingly issued a letter to the investigating agency. The said letter is at Exhibit 66. It appears from the record that the evidence of this witness has been adduced with a view to show that on the date of the incident i.e. in the intervening night of 14th June 2006 and 15th June 2006 there was electricity supply at Gavade Vasti where the crime in question has taken place. In the lengthy cross examination at the instance of the Appellants, no material has been elicited which would falsify the statement of this witness.

8. P.W. 3 is Santosh Desai. He is a witness to the spot panchanama. P.W. 3 in his evidence has stated that on 15th June 2006 he was called by Miraj Police at the house of Balu Gavade. Mahalappa Karbu was the another panch. The said spot was shown to the said panch witness by the police. The said spot of incident was in the house of Balu Gavade. There was an open land in front of the said house. That a footpath was passing from the said open land. After entering into the said house, he saw the beds in scattered condition and was having blood on it. He noticed the blood splashed in the said room. The said house was consisting of two rooms. In his presence, the police seized in all 23 articles. He also saw two wooden logs. The said logs were having bloodstains. The length of one wooden log was 2. ft. and 3 inches and the length of another wooden log was 1 ft. and 9 and 1/2 inches. This witness identified all the articles which were seized from the spot of incident. The said articles are-

- i) The two wooden logs (articles A-1 and A-2)
- ii) The five pillows (articles A-3 to A-7)
- iii) The two gunny bags (articles A-8 and A-9)
- iv) The quilt having green colour (article A-10)
- v) Another quilt having mixed colour (article A-11)
- vi) Third quilt having red and mixed colour (article A-12)
- vii) The mat (article A-13)

- viii) One slipper of right foot (article A-14)
- ix) Two soil samples (articles A-15 and A-16)
- x) Another soil sample (article A-17)
- xi) Seven other samples of soils (articles A-18 to A-24).
- xii) The bangle pieces in green and red colour (article A-25)
- xiii) One small wooden piece (article-26)

The scene of offence panchanama/spot panchanama which is at Exhibit 68 has been proved by this witness. He has further stated that paper slips with the signature were attached to those seized articles which bears his signatures. In the cross-examination by accused No. 1, this witness has admitted that he did not know whether the wax seal was applied to the seized articles by the police. In further cross-examination by accused Nos. 2 and 4, this witness has admitted that he had not seen the back side portion of the said house. He further admitted that mat (chatai) and beds (quilts) are different things. He has also admitted that on the bed inside the room one slipper was found lying. He has further admitted that one slipper was found lying on the mat. That he knew Narayan Jadhav. That there is a bund on the Southern side of the house of Narayan Jadhav and one cannot see from the courtyard of Narayan Jadhav as to what is going on in front of the house of Balu Gavade.

A bare perusal of the said scene of offence i.e. the spot panchanama and seizure panchanama of the said 23 articles is absolutely silent about the sealing of the articles which were seized by the police on the spot thereby giving rise to a strong suspicion that the articles which were seized on the spot of incident were not tampered with till they were sent to the Chemical Analyser. In other words non sealing of the articles on the spot of the incident gives rise to a strong suspicion in the mind of this Court that those articles were amenable to tamper with, till the time they were sent to the Chemical Analyser.

9. P.W. 4 is Manik Bhanuse. This witness is a panch witness to the house search which was carried on 19th June 2006 of Popat Mane accused No. 3 and to the seizure of half shirt with bloodstains of Mahadev Gavade (accused No. 4). As this witness did not support the prosecution case, he came to be declared as a hostile witness. Even in the cross-examination by the learned APP no material which is useful to the prosecution has been brought on record.

10. P.W. 5-Sitaram Waghmare is a panch witness to the seizure of clothes panchanama of accused Nos. 1 to 5 dated 18th June 2006. This witness also did not support the prosecution case and was declared hostile. Nothing has been brought on record in his cross-examination which would come to the aid of the prosecution.

11. P.W. 6 is Rasul Ainuddin Saudagar, a rickshaw driver by profession. This witness in his testimony has stated that he was running his auto rickshaw at

Arag. That on 14th June 2006 in the evening at about 6.30 p.m. he was at the S.T. stand Arag, plying his rickshaw. At that time he carried in his auto rickshaw Mahadev Gavade (accused No. 4) from the hospital of Dr. Kundale which was near to the S.T. Stand, upto Gavade Vasti. Manoj Gavade (accused No. 2) had engaged the said auto rickshaw. At that time Mahadev Gavade (accused No. 4), Mangal Gavade (accused No. 5) i.e. the wife of Mahadev Gavade, and Manoj Gavade (accused No. 2) i.e. the son of Mahadev Gavade were in his auto rickshaw. He dropped them near Gavade Vasti at about 7.30 to 7.45 p.m. In his cross-examination by the Appellants this witness has admitted that there was fracture to the leg of Mahadev Gavade (accused No. 4) and therefore by lifting him, he was put in his auto rickshaw. He has further admitted that plaster (medical bandage) was applied to his leg.

12. P.W. 7 is Ashok Shinde. P.W. 7 in his testimony has stated that he used to collect milk from various areas and used to supply the said milk in dairy at Miraj. He knew Balu Gavade and Malubai (accused No. 1), as they used to supply their milk to him in the morning at about 8.00 to 8.30 a.m. He also used to supply milk in the evening at about 5.30 p.m. He has further stated that two days prior to the incident when he had been to Gavade Vasti for collecting milk, Manoj Gavade (accused No. 2) met him. P.W. 7-Ashok Shinde made enquiry with Manoj as to when he came, to which Manoj replied that he came in the morning. He noticed Manoj (accused No. 2), Suresh (accused No. 6), Popat (accused No. 3) and Balu Gavade (deceased) sitting there. He thereafter went to another place for collecting milk. When he went to the said place the said persons were discussing but subsequently they stopped their discussion. That as per his routine on the next day, he had been to Gavade Vasti at about 8.00 to 8.30 p.m. when Malubai (accused No. 1), Mahadev (accused No. 4), Manoj (accused No. 2) and Popat (accused No. 3) were found sitting in the courtyard of Malubai (accused No. 1). That in his presence Malubai (accused No. 1) asked Manoj (accused No. 2) to call Balu Gavade's family. Then Balu Gavade, Balu's wife, Sunil, Balu's another daughter and one married daughter came at the house of Malubai (accused No. 1) in his presence. That Narayan Jadhav and other relatives also came there. Malubai (accused No. 1) had offered tea to the persons who came from the family of Balu Gavade and gave milk to Raju Gavade and she also gave tea to other persons. In his presence all those persons left the house of Malubai (accused No. 1) at about 9.15 to 9.30 p.m. On the next day in the morning he came to know about the incident. He had been to Balu Gavade's Vasti and at that time he saw wooden log and one slipper near the house of Balu Gavade. The said slipper was found lying in the courtyard of house of Balu Gavade (deceased).

This witness was cross examined by the Appellants. This witness has denied the suggestion that in his presence Malubai (accused No. 1) asked Manoj (accused No. 2) to call the family members of Balu Gavade. He has admitted that the property of Malubai (accused No. 1) is separate and she is residing separately from other Gavade family. P.W. 7-Ashok Shinde has further admitted that

Mahadev (accused No. 4) and his family members are residing at Pune. That the colour of the slipper which was found in front of the house of Balu Gavade was blue. That the size of the said slipper was of an elder person. He has admitted that he was on the spot of incident for about one and half to two hours after the police came. That he did nothing in the said period on the spot. At that time on his own he did not meet the police. In his cross-examination certain omissions have been elicited. The omission to the effect that Balu Gavade and Malubai (accused No. 1) used to supply milk in the evening at about 5.30 p.m. has been elicited thereby creating doubt about his natural presence at Gavade Vasti on 14th June 2006 after 5.30 p.m. Certain other omissions have also been elicited in his evidence. He has further admitted that when Mahadev (accused No. 4) was in the hospital of Dr. Kundale he had been there to meet him. That as Mahadev (accused No. 4) had a fracture to his leg, he went there to meet him i.e. to see Mahadev (accused No. 4) after he came from the hospital. He has further admitted that he had no reason to collect milk from Gavade Vasti at about 8.00 to 8.30 p.m. That on the earlier day of incident nothing doubtful was noticed by him when he had been to Gavade Vasti at about 8.00 to 8.30 p.m. He has further admitted that in his presence nobody made any complaint about any trouble or irritation on account of drinking the said tea. He has further admitted that when Manoj (accused No. 2) and the other persons were talking, he did not notice anything doubtful. This witness had denied the suggestion put to him that as he is supplying milk to the police officers, he has been cited as a witness in this case. He has further admitted that the police were making enquiry with him about the people on the basis of suspicion.

13. P.W. 8 is Somnath Chavan, a panch witness to the discovery panchanama u/s 27 at the instance of Malubai (accused No. 1) thereby recovering the Dhattura (Argemone Mexicana) plant, its flowers and seeds. P.W. 8-Somnath Chavan in his testimony has stated that on 21st June 2006 he was called in the Miraj Rural Police Station. Mahesh Kadam was the another panch witness who was present there. In his presence the police made enquiry with the lady who disclosed her name as Malubai Gavade. Malubai (accused No. 1) gave information to the police which was reduced into writing. Malubai (accused No. 1) expressed her willingness to show the place where the plants of Dhattura (Argemone Mexicana) are located from which she took the seeds. The said memorandum was reduced into writing which is at Exhibit 74. In pursuance of the said memorandum of statement, Malubai (accused No. 1) led the police to village Arag at Gavade Vasti. Thereafter she pointed out the house which was facing towards East and took the panch witnesses and the police in a field which was in the back side of the said house and pointed out two plants of Dhattura (Argemone Mexicana). The police uprooted both the trees and seized it by effecting a panchanama. The said panchanama is at Exhibit 75. That the panch witnesses put their signatures on the paper slips which were affixed to the said seized plants as labels. This witness was cross examined by the Appellants. However, it appears that no material has been elicited from the cross-examination which would help the

Appellants in disbelieving the seizure of the said two Dhattura (Argemone Mexicana) trees in the presence of this witness at the instance of Malubai (accused No. 1).

14. P.W. 9 is Ashok Jatkar. He is the witness who first informed the police about the missing of tiles from the roof of Balu Gavade's house over the telephone. P.W. 9-Ashok Jatkar in his testimony has stated that on the date of incident, he reached Laxmiwadi and came to know that, at Gavade Vasti the door of the house of Balu Gavade was not opening and there is no response from inside the house. Therefore he went to Gavade Vasti at the house of Balu Gavade and gave a call to the police. As nobody gave response to his call, he went to the backside of the said house. After reaching the backside of the said house, he noticed about the removing of the tiles from the roof of the said house. Therefore a doubt was raised in his mind. He thereafter went to the house of Narayan Jadhav, a neighbourer of Balu Gavade and from the house of Narayan Jadhav he gave a call to the police. That a police by the name Koli was there in the police station to whom he narrated the incident. Thereafter Police Officer Nadgouda and other police officers came to the spot and inspected the said premises. Then Police Officer Koli climbed on the roof and entered in the said house. After the door of the said house was opened, he saw six dead bodies lying in the said room. He identified the said dead bodies. He also noticed one slipper lying on the said spot. P.W. 9-Ashok Jatkar has further stated that there was a dispute going on between deceased Balu Gavade and Malubai (accused No. 1) on account of their agricultural land and about the share from the well water. It appears to us that this is the motive which has been put forth by the prosecution by examining this witness.

This witness was cross-examined at length by the Appellants. In his cross-examination he has admitted that he did not know P.W. 7-Ashok Shinde. He has admitted that after reaching to the spot he made enquiry with the persons who were present there and in that enquiry, he came to know that the door of the house of Balu Gavade was not opening. That he along with Narayan Jadhav went to the house of Narayan to give a call to the police. An admission has been elicited from this witness by the Appellants that with a view that the situation inside the said room should not be disturbed, the police did not allow any person to enter in the room.

15. P.W. 10 is Ashok Gavade, the son of deceased Shantabai Gavade. P.W. 10 in his testimony has stated that deceased Shantabai Gavade was his mother. That the parents of his mother are from village Arag. He had four maternal uncles, out of which Vithal Gavade is no more. Balaram Gavade (deceased) i.e. the maternal uncle was residing at Gavade Vasti. Accused Malubai is the wife of his deceased maternal uncle Pandurang Gavade. That Malubai was residing in the house of Mahadev (accused No. 4). Mahadev (accused No. 4) is his third maternal uncle and was residing at Pune on account of his services. That his elder maternal uncle Vithoba Gavade was murdered before 30 to 40 years on account of

property dispute. In that case Pandurang Gavade, Balaram Gavade and Malubai Gavade were accused and Pandurang and Balu were convicted. That Malubai has one married daughter and does not have son. Malubai had adopted Manoj (accused No. 2). Manoj is the son of Mahadev (accused No. 4). Balaram Gavade was insisting Malubai to adopt his son Sunil. There used to be a dispute between Malubai (accused No. 1) and Balu Gavade (deceased) and Mahadev (accused No. 4) on account of the land and for fetching the water from the well. Some times P.W. 10-Ashok Gavade used to convince them. That one week prior to the incident Mahadev (accused No. 4) had been to Gavade Vasti, village Arag, to attend a religious function. That his mother Shantabai was also accompanying his maternal uncle Mahadev. Mahadev (accused No. 4) met with an accident while coming from Mayakka, Chinchani. On account of the fracture to his left leg he was admitted in the hospital of Dr. Kundale. On 7th June 2006 he had been to the said hospital to meet his maternal uncle Mahadev (accused No. 4). He also met his mother Shantabai at Gavade Vasti. He then came back at Tasgaon and his mother Shantabai stayed behind in Gavade Vasti at village Arag. That again on 13th June 2006 he came at village Arag for fetching his mother. At that time he met his maternal uncle Mahadev and went to Gavade Vasti. He saw Malubai Gavade (accused No. 1), Suresh (accused No. 6), Manoj (accused No. 2), Popat (accused No. 3) sitting on a cot in front of the house of Mahadev (accused No. 4). He made enquiry with Manoj (accused No. 2) as to when he came there, to which Manoj stated that he came there in the morning. Thereafter from Gavade Vasti he came to village Arag along with Manoj (accused No. 2). At village Arag in the presence of P.W. 10, Manoj (accused No. 2) purchased slippers from the footpath. The said slippers were of the Paragon company having blue colour. Thereafter P.W. 10-Ashok Gavade by a jeep directly went to Miraj. P.W. 10-Ashok Gavade has identified the pair of slippers as Article 14. That on the date of the incident at about 10.00 a.m. he came to Arag and reached the spot. He did not enter the said house. He saw the said room from the door. He noticed one slipper of blue colour was lying on the backside of the door towards Eastern side. He also saw then dead bodies in the said room. He identified the said six dead bodies. He thereafter went to the house of Mahadev Gavade (accused No. 4) where he noticed another slipper below the cot in the courtyard of the said house. The said slipper was of left leg.

That his maternal uncle Mahadev (accused No. 4) was arrested by the police. Mahadev was in jail at Sangli. Mahadev Gavade had sent a letter dated 9th August 2006 to him. It was sent to P.W. 10-Ashok Gavade on his address at Tasgaon. In the said letter it was mentioned that all the conspiracy was hatched by Malubai (accused No. 1) and Mahadev (accused No. 4) would narrate all the facts to him when he would come to meet him in jail. It was written in the handwriting of Mahadev (accused No. 4). The letter did not bear signature. After receiving the said letter P.W. 10-Ashok Gavade along with Kisan Gawade went to Sangli to meet Mahadev in jail. They met him in the jail. On the enquiry of P.W. 10-Ashok Gavade, Mahadev (accused No. 4) told him that this was the

conspiracy of Malubai (accused No. 1) and the persons from their kinship. Mahadev (accused No. 4) also stated that he has committed mistake. The prosecution has relied on this statement as an extra-judicial confession given by accused No. 4 Mahadev to P.W. 10-Ashok Gavade

16. P.W. 10-Ashok Gavade was cross examined by the Appellants at length. In his cross-examination an omission to the effect that, he saw another slipper below the cot in the courtyard of the house of Mahadev (accused No. 4) and the said slipper was of left leg, has been elicited. A further omission has been elicited to the effect that, the handwriting on the said letter was of Mahadev Gavade (accused No. 4). This witness in his cross-examination has admitted, that when he saw the said slipper below the cot the police was not with him. That he did not brought to the notice of the police that one slipper was lying below the cot. That he did not find it necessary to state about the said chappal/slipper. That at his own accord he did not state anything about the situation of the spot to the police. That at his own accord, he did not state to the police about the suspected persons. That he did not remember whether on 16th June 2006 the slipper which he had seen below the cot was shown to him by the police when he had been to the police station. This witness has further admitted that till the incident there was no dispute in between his family and the family of Mahadev (accused No. 4). He has further admitted that the person from whom Manoj (accused No. 2) had purchased the slipper was not identified by the police. That slippers similar to the slippers which he saw in the Court are easily available in the market. That after receiving the said letter he had been to the police station after 15-20 days. That when the dead bodies were taken for postmortem, Popat (accused No. 3), Suresh (accused No. 6) and Manoj (accused No. 2) were with them.

17. P.W. 11-Amol Waghmode is the husband of deceased Jayashree Waghmode and son-in-law of Balu Gavade. P.W. 11-Amol Waghmode in his testimony has stated that his in-laws were residing at Gavade Vasti at Village Arag. Prior to the incident he had been to Gavade Vasti at Arag. That in his presence the dispute between Malubai (accused No. 1) and his father-in-law i.e. Balu Gavade had taken place on account of taking water from the well. The said dispute has occurred while using the road for taking drinking water from the well. That on 4th June 2006 Shirmabai (deceased) had informed him on telephone that his cousin father-in-law i.e. Mahadev Gavade (accused No. 4) was admitted in the hospital for sustaining injury to his leg. That Mahadev (accused No. 4) was admitted in the hospital of Dr. Kundale. Accordingly on 6th June 2006 he along with his wife Jayashree went to Arag from Tasgaon and met Mahadev Gavade in the hospital of Dr. Kundale. That Mahadev Gavade (accused No. 4) had sustained injury on his right leg. Thereafter P.W. 11-Amol Waghmode along with his wife Jayashree went to his in-laws house at Gavade Vasti. Shantabai Gavade was present there. His in-laws were also present there. His wife Jayashree stayed behind at Gavade Vasti and P.W. 11-Amol Waghmode came back to Tasgaon. That on 15th June 2006 in the morning between 8 to 8.30 a.m. he received a telephone message from the house of P.W. 10-Ashok Gavade and thereafter he

came to Arag at about 10.30 a.m. The police and several other people were present in front of the house of his father-in-law i.e. Balu Gavade. He then entered in the house of Balu Gavade and noticed six dead bodies in the said house. He also saw a slipper of right leg which was lying near the dead body of Balu Gavade. Thereafter he went to the house of Mahadev Gavade (accused No. 4) There he saw another slipper lying below the cot in front of the house of Mahadev Gavade (accused No. 4). This witness was cross-examined at length by the Appellants.

In his cross-examination this witness has admitted that he did not show the slipper which was lying below the cot in front of the house of Mahadev Gavade (accused No. 4) to the police. That as nothing was found suspicious to him, he did not bring the said slipper to the notice of the police. That on the next day i.e. on 16th June 2006 in the night police had been to Tasgaon. At that time the statement was not recorded by the police by making enquiry with him. When he went to the police station Kisan Gavade and P.W. 10-Ashok Gavade were also with him. That he did not remember whether police made enquiry with him and recorded his statement at that time.

18. P.W. 12 is Prakash Kumbhar. This witness is a tailor by profession. As this witness did not support the prosecution case, the concerned learned APP sought permission of the Court to cross-examine this witness. It appears that no material evidence has been brought on record during his cross-examination by the learned APP.

19. P.W. 13 is Narayan Jadhav and was residing near Gavade Vasti at village Arag. In his examination-in-chief this witness has stated that the field of Mahadev Gavade (accused No. 4) was near to the field of Balu Gavade (deceased). That as the house of Malubai (accused No. 1) had collapsed, she was residing in the house of Mahadev Gavade (accused No. 4). That Malubai Gavade (accused No. 1), Mahadev Gavade (accused No. 4) and Balu Gavade were taking irrigated crops from their lands. This witness has further stated that in his presence the incident of offering tea or milk to the persons gathered there did not occur. On that particular night he did not see any person neither he was awoken.

As P.W. 13-Narayan Jadhav subsequently did not support the prosecution case and resiled from his police statement, the learned APP sought permission to cross-examine this witness. In his cross-examination no material has been extracted by the prosecution which will help the prosecution in connecting the chain of circumstances. After the cross-examination of this witness by the learned APP, accused Nos. 2, 4 and 5 further cross-examined him. In his further cross-examination this witness has admitted that he was having good relations with the family of Balu Gavade. That accused Mahadev, Manoj, Popat, Mangal and Suresh were having good relations with the deceased persons.

20. P.W. 14 is Shamrao Naik, a Police Patil of village Laxmi Wadi and was also

holding the charge of village Arag. P.W. 14 in his testimony has stated that since 1985 he was serving as a Police Patil. He was a Police Patil of village Laxmi Wadi and was holding charge of village Arag. He knew Gavade Vasti situated at Arag, which was on the road proceeding from Arag to Gavade Vasti. He knew Malubai Gavade and deceased Balu Gavade. That as there was dispute he was called by Balu Gavade and therefore he had been to the said Gavade Vasti prior to two years of the incident. The said complaint was in connection with taking water and about the landed property. The dispute was between Malubai Gavade (accused No. 1) and Balu Gavade (deceased). The said complaint was also on account of the adoption of Mahadev Gavade's son by the name Manoj by Malubai (accused No. 1). P.W. 14-Shamrao Naik convinced Balu Gavade for not making any quarrel. Nothing had happened in his presence in between Balu Gavade and Malubai Gavade. That on 15th June 2006 he received a phone call at his residence thereby informing him about the murder taken place at Gavade Vasti. Immediately on motorcycle he went at Gavade Vasti and saw dead bodies of six persons in the house of Balu Gavade. That he went to the house of Mahadev Gavade. There he met Malubai (accused No. 1) and sat on a cot which was in front of the house of Mahadev Gavade. That there he saw the slipper of left leg. That one slipper was found lying outside the house of Balu Gavade.

In the cross-examination of this witness he has admitted that financially Malubai was poor and was doing labour work in the field. He has admitted that since last so many years there was a partition in between Malubai, Mahadev and Balu Gavade and they were residing separately. That they were cultivating their lands separately. He has further admitted that there was no Court matter in between Malubai and Balu Gavade on account of adopting Manoj by Malubai Gavade (accused No. 1). He has further admitted that a Police Patil is supposed to take entry in the register about a complaint made by the villagers. That there is no entry in the complaint register regarding the dispute occurred between Balu Gavade and Malubai (accused No. 1). That his statement was recorded at about 8.30 p.m. by the police after the dead bodies were sent for postmortem examination. That he saw the slipper below the cot in front of the house of Mahadev Gavade (accused No. 4) at about 10 to 10.30 a.m. on the date of the incident. The police seized the said slipper and the same was wrapped in a paper. That police also seized one slipper which was found lying near the house of Balu Gavade. He noticed one blood drop on the said slipper.

21. P.W. 15 is Dr. Bapusaheb Satpute. P.W. 15 in his testimony has stated that he was serving as a Medical officer in Government Medical College, Miraj. On 15th June 2006 he was on duty in the said college. On that day, he conducted postmortem examination of dead body of Sunil Gavade. The said dead body was brought by Police Constable Jadhav attached to Miraj Rural Police Station. During the course of examination he found :

"(i) Contused lacerated wound on occipital region-having size 5 x 3 cms.

(ii) Abrasion over left temporal region having size 3 x 3 cm."

On external examination he noticed :

"(i) Hematoma under scalp at occipital region, 6 x 4 cm

(ii) Hematoma under the scalp at left temporal region, 4 x 4 cm. Injuries on skull i.e. multiple fractures of occipital bone, 5 x 1/4th cm., two in number and 4 x 1/2 cm. three in number.

(iii) Vertical fracture over left parietal bone, 10 x 1/10th cm.

(iv) Horizontal fracture over frontal bone, 8 x 1/10th cm."

(1) In connection with the brain, he notice severe subdural Hematoma on both sides. P.W. 15-Dr. Satpute therefore opined that the death occurred within four hours after the last meals and the probable cause of death was cardio respiratory arrest subdural severe hemorrhage due to severe head injury. After the receipt of the Chemical Analyzer's report he gave his final opinion regarding the cause of death as "head injury associated with Argemone poisoning". The final cause of death certificate is at Exhibit 85. He further opined that the injury can be caused by wooden logs which are Article A-1 and Article A-2.

In the cross-examination this witness has admitted that he did not notice any blood oozing from the wounds and he did not mention to that effect in paragraph 17 of the postmortem report. He has admitted that he did not notice any irritating smell when the dead body was brought to him for postmortem. He has further admitted that in case of poisoning he can gather the smell of the said person. That Argemone Mexicana is called as Dhattura in the local language. He has no idea about the symptoms in the case of consumption of Argemone Mexicana seeds. That he had not gone through any book to see the symptoms of Argemone Mexicana.

22. P.W. 16 is Dr. Archana Sawant who had conducted the autopsy on deceased Shantabai Gavade. P.W. 16 in her testimony has stated that since 2005 she was attached to Civil Hospital, Miraj as medical officer. That on 15th June 2006 she was on duty as Medical Officer and the dead body of Shantabai Gavade was brought by the police for postmortem in the hospital. She immediately issued a provisional cause of death certificate of Shantabai. She mentioned the provisional cause of death, was death due to "fracture to right parietal and occipital bone due to inter-cranial hemorrhage due to severe head injury". That she did autopsy of the dead body of Shantabai and issued the postmortem report. That while conducting the postmortem examination she noticed external injuries which have been mentioned in column No. 17 of the said postmortem report which is at Exhibit 91. She noticed one CLW over the scalp, right parietal occipital region 4 x 5 cm, bone deep, horizontally present. That age of the injury was within 24 hours and the cause of injury was hard and blunt object. On internal examination she noticed linear non depressed fracture over the right parietal occipital region, 6 cm in length. She noticed the evidence of massive subdural Hematoma in right parietal region. From the examination she noticed

that the last meal was taken 2 to 4 hours prior to the death. After receiving the Chemical Analyzer's report, she gave her final opinion as to the cause of death due to head injury and the Chemical Analyzer's report revealed Argemone Mexicana seeds and ethyle alcohol in the viscera. She subsequently issued the final cause of death certificate which is at Exhibit 92. She opined that the injuries which were on the dead body of Shantabai were possible by the wooden log which are Articles A-1 and A-2. This witness has categorically stated in her examination-in-chief that the head injuries mentioned by her in the postmortem report were not possible due to fall.

P.W. 16 Dr. Archana Sawant was cross-examined by the Appellants at length. In her cross-examination she has admitted that the injury which was mentioned in column No. 19 of the postmortem report was corresponding to injuries mentioned in column No. 17 of the said report. That she noticed one external fatal injury. That Argemone Mexicana is commonly known as Dhattura. That Argemone Mexicana is autotoxic substance and some reactions are expected after its consumption. That Argemone Mexicana has bitter taste. That due to consumption of Argemone Mexicana i.e. Dhattura, the first reaction would be dryness in throat. Dimness of vision, vomiting and headache are the symptoms of consumption of Argemone Mexicana. That due to consumption of Argemone Mexicana pupils get dilated. That any consumption of poison including Argemone Mexicana would result into restlessness of the person. That during the postmortem examination she did not notice any vomitus on the sari or blouse of the dead body of Shantabai. That if equal quantity is consumed by different persons of different age groups, the result would be more on the person who is young in age. P.W. 16 has further admitted that it is true that the heart, lungs, and internal organs would be congested due to consumption of Argemone Mexicana. That in her examination she did not notice any edematous to lungs or congestion to the internal organs. She has further admitted that while issuing final cause of death certificate, no information regarding the quantity of poisonous substance was informed to her by the police. That she cannot say how much quantity of Argemone Mexicana is sufficient to cause death.

23. P.W. 17 is Dr. Sidharth Darbare who has conducted the autopsy of deceased Chhaya and Jayashree. P.W. 17 in his testimony has stated that he was serving as a Medical Officer in the Government Medical College and Hospital at Miraj. On 15th June 2006 he was on duty in the said hospital. On that day dead bodies of Chhaya @ Chakuli Balu Gavade and Jayashree Amol Waghmode were sent to him for postmortem by Miraj Rural Police Station. On external examination of Chhaya @ Chakuli he saw contusion on bilateral frontal region having size of 5 cm x 4 cm and he also saw contused lacerated wound on left temporal parietal region having size 7 cm x 2 cm bone deep, bleeding was present. On internal examination he noticed hematoma under the scalp corresponding to injury No. 1 i.e. contusion over bilateral frontal region as mentioned in paragraph 17 of the postmortem report. He noticed depressed fracture on frontal bone having size of 12 x 3 cm. He noticed fracture on left temporal parieto occipital region. On

internal brain examination, he found intracranial hemorrhage. That the said death had occurred within four hours from the last meal. As per the opinion of P.W. 17-Dr. Sidhartha Darbare the cause of death was due to severe head injury. He had preserved the viscera for chemical analysis to rule out the administration of poisoning. The postmortem report of Chhaya is at Exhibit 95. That after receiving the Chemical Analyzer's report of viscera he issued the final cause of death certificate. According to P.W. 17-Dr. Sidhartha Darbare the final cause of death was, death due to severe head injury with Argemone Mexicana poisoning. The final cause of death certificate is at Exhibit 95. P.W. 17 has stated that the injuries which he had mentioned in column Nos. 17 and 19 of the postmortem report which is at Exhibit 95 can be caused by Articles A-1 and A-2 i.e. wooden logs which were shown to him.

P.W. 17-Dr. Sidhartha Darbare also conducted the postmortem examination of the dead body of Jayashree Waghmode. At the time of conducting the postmortem examination of Jayashree Waghmode, P.W. 17-Dr. Darbare noticed external injuries on the body of Jayashree. He noticed contused lacerated wound over right fronto parietal region-vertical, having size of 6 cm x 1 cm bone deep. Bleeding was present. He also found contused lacerated wound over left occipital region, having size of 3 cm x 2 cm bone deep. On internal examination of the head, he noticed hematoma related to the injury as mentioned in column No. 17. In connection with the skull, he noticed fracture over the left fronto parietal region, having size of 7 cm in zigzag mode. In connection with brain, he noticed intra-cranial hemorrhage. After conducting the postmortem examination, he opined the probable cause of death was due to severe head injury. The postmortem report is at Exhibit 98. He also opined that the death of Jayashree Waghmode has occurred within four hours from the last meal. After receipt of the Chemical Analyzer's report, he again issued a final cause of death certificate. As per the final cause of death certificate, the death of Jayashree Waghmode was due to severe head injury with Argemone Mexicana poisoning. The said certificate is at Exhibit 99. P.W. 17-Dr. Darbare further stated that the injuries which he had mentioned in his postmortem report in Column Nos. 17 and 19 can be caused by the weapon/instrument viz. Articles A-1 and 2 shown to him.

P.W. 17-Dr. Sidhartha Darbare was thoroughly cross examined by the Appellants. In his cross-examination this witness has admitted that he did not notice any abnormal smell while effecting the postmortem of dead body of Chhaya. The reddish and brownish fluid can be occurred by various reasons in connection of his observation regarding stomach contents of Chhaya. That he did not personally inform to the police that he suspected poisoning in the case of death of Chhaya and Jayashree. That he knew about the symptoms of Argemone Mexicana. Hypnotic is the special characteristic of Argemone Mexicana. That he cannot say the special characteristic of Argemone Mexicana. He cannot say the symptoms of consumption of Argemone Mexicana on the organs of body. That he had given his opinion mostly on the basis of the Chemical Analyzer's report. That after receiving the Chemical Analyzer's report, he had also gone through the

books to find out what is mentioned by Argemone Mexicana and what are the symptoms of consumption of Argemone Mexicana. Even though he had gone through the books, he cannot say about the symptoms on organ of body on account of consumption of Argemone Mexicana. P.W. 17-Dr. Sidhartha Darbare has further admitted that he did not notice oedema to the legs and any enlargement to the liver of Chhaya and Jahashree while effecting the postmortem of both the said bodies. He did not notice blackish or bluish colour of the skin of Chayya and Jayashree. He further admitted that the heart of Chhaya and Jayashree were not dilated and those were within normal limit. He further admitted that he did not notice any purging on the clothes of Chhaya and Jayashree. He agreed with Modi's Jurisprudence that in case of consumption of Argemone Mexicana internally that produces oedema of legs, then enlargement of liver, dilation of the heart and passing of liquid stools. That he cannot say, what was the percentage of the poison or poisoning substance in the body of the deceased. He further admitted that if Argemone Mexicana is consumed, there would be symptoms of breathlessness, vomiting and dryness. He has further admitted that in the viscera form it has not been mentioned that viscera was sealed.

24. P.W. 18 is Dr. Narendra Pawar, a Medical Officer attached to Miraj Medical College and Hospital, had conducted the autopsy of deceased Balu Gavade and Shirmabai Balu Gavade. P.W. 18 in his testimony has stated that since July 2003 he was serving as a Medical Officer in the Medical College and Hospital at Miraj. That on 15th June 2006 he was on duty in the hospital. That the dead bodies of Balu Gavade and Shirmabai Balu Gavade were sent by Miraj Rural Police Station for conducting the postmortem investigation. He alone conducted both the postmortem examinations. He issued the provisional cause of death certificate of Balu Gavade which is at Exhibit 101. The cause of death as was mentioned in the said certificate was "severe head injury". The viscera was preserved to rule out the case of poisoning. During the course of postmortem examination he noticed contused lacerated wound over right occipital region, horizontally curved at centre, measuring 7 cm x 2 cm bone deep. Bleeding was present. During the internal examination, he noticed hematoma under the scalp over posterior occipital region. He noticed fracture to the middle occipital region, measuring 9 cm x 4 cm on skull. In connection with brain, he noticed intra-cranial hemorrhage. He issued the postmortem report accordingly. The postmortem report is at Exhibit 102. He also opined that the death of Balu Gavade had occurred within four hours from the last meal. That after receiving the Chemical Analyzer's report, he issued the final cause of death certificate. The cause of death of Balu Gavade was due to deep severe head injury. However, Chemical Analyzer's report revealed Argemone Mexicana seeds and ethyl alcohol. Accordingly he issued the said certificate. The said certificate is at Exhibit 103.

On the same day P.W. 18-Dr Narendra Pawar conducted the postmortem on the dead body of Shirmabai. He issued a provisional cause of death certificate with the cause of death as head injury. The viscera was preserved for Chemical

Analyzer to rule out the case of poisoning. The provisional cause of death certificate is at Exhibit 104. On internal examination he noticed hematoma under the scalp over frontal and occipital region. He noticed fracture over the left occipital bone extending upto the base of skull, depressed fracture to frontal bone. The severe head injury was the probable cause of death of Shirmabai. Accordingly he prepared the postmortem report. The said postmortem report of Shirmabai is at Exhibit 105. That the death of Shirmabai occurred within four hours from the last meal. After receiving the Chemical Analyzer's report, he issued final cause of death certificate of Shirmabai Gavade. The cause of death was due to severe head injury. However, the Chemical Analyzer's report revealed Argemone Mexicana seeds. That the injuries mentioned in the postmortem report which are at Exhibits 102 and 105 can be caused by weapons i.e. Articles A-1 and A-2. shown to him.

This witness was cross-examined by the Appellants at length. In his cross-examination this witness has admitted that there was no purging or passing of stool so far as postmortem report which is at Exhibit 102 i.e. of Balu Gavade is concerned. That in both the cases the hearts were not dilated. He did not notice any change in colour of the skin in both the cases. There was no oedema or swelling on legs in both the cases. That in both the cases liver was not enlarged. He further admitted that in case of consumption of Argemone Mexicana, there would be symptom of nausea, vomiting, expectorant, laxative and sedative effects. He further admitted that Modi's Jurisprudence on the subject of Toxicology is an authority. He agreed with the proposition that Argemone Mexicana seeds are poisonous which when taken internally, produce oedema of legs, breathlessness, slight enlargement of liver and occasionally diarrhea. That approximately within 2 to 3 hours of consumption of Argemone Mexicana seeds, the symptoms will start. In the postmortem report he did not notice any sign or symptoms of consumption of Argemone Mexicana. That in the viscera form it has not been mentioned that viscera was sealed or not. It is true that in the final cause of death certificate, the reference in connection to cause of death with Argemone Mexicana is made on the basis of Chemical Analyzer's report only.

25. P.W. 19 is Sanatan Bhosale. P.W. 19 in his testimony has stated that on 26th June 2006 P.W. 22-API Nadgouda of Rural Police Station, Miraj called him at about 9 to 9.30 a.m. P.W. 22-API Nadgouda informed him that some accused persons are required to be sent for narco analysis test. Five accused persons were present in the police station. That in his presence API Nadgouda made an enquiry with those accused persons whether they were ready for narco test and other tests to which the said accused persons disclosed their readiness. The police accordingly prepared the paper and he signed on it. Another person by the name Bedge was also present as panch. The said panchanama whereby the accused persons gave their consent for narco analysis test is at Exhibit 109. P.W. 19-Sanatan Bhosale has further stated that in his presence four accused persons signed the said panchanama and one accused person put his thumb impression. That he cannot tell the complete names of the said accused persons who were

present in the police station, but they were from Gavade family.

This witness was cross examined by the Appellants at length. However, no material which would come to their help was elicited in the said cross-examination and it appears to us that the cross-examination proceeds by giving general suggestions to this witness. Apart from the said fact, we have noticed that, as this witness has failed to identify the exact accused persons with their names, with whom API Nadgouda made enquiry to perform the narco analysis test, the evidence of this witness, according to us, loses its importance.

26. P.W. 20 is Dhananjay Aundhe, who is a Police Constable attached to Miraj Police Station. He is a carrier of the six viscera and other articles to the Forensic Science Laboratory, Pune. P.W. 20 in his testimony has stated that on 20th June 2006 in the morning he proceeded to Pune along with the letter issued by the Superintendent of Police and six viscera which were given in his possession for taking it to the Laboratory at Pune. That on 1st August 2006 he was ordered to take the articles to Chemical Analyzer at Pune. At that time in all 53 articles in sealed condition were given to him. He was asked to deposit the said articles with Chemical Analyzer at Pune. That on 2nd August 2006 he went to Pune, deposited all the said articles with the Laboratory at Pune. It appears from the cross-examination of this witness that the cross-examination proceeds in usual routine manner, without there being any admission brought on record, which will create doubt about the testimony of this witness in the mind of this Court. Otherwise also this witness is a carrier of the viscera and the other articles to the Forensic Science Laboratory/Chemical Analyzer at Pune and, according to us, is a formal witness.

27. P.W. 21 is Shamgonda Patil, a Police Naik then attached to Miraj Rural Police Station. That on 26th June 2006 two packets of Argemone Mexicana seeds and powder thereof pertaining to Crime No. 95/2006 were directed to be handed over to Chemical Analyzer at Pune. In pursuance of the order given by the superior officers, he handed over all the sealed articles in sealed condition to Chemical Analyzer at Pune. In his cross-examination no omission and/or any admission has been brought on record by the Appellants.

28. P.W. 22 is Suhas Nadgouda, the Investigating Officer of Crime No. 95/2006 i.e. the present crime. P.W. 22 in his testimony has stated that from November 2004 to May 2007 he was attached to Miraj Rural Police Station as Assistant Police Inspector and investigated Crime No. 95/2006 u/s 302 of the Indian Penal Code. The stage from receipt of information pertaining to the present crime, the investigation carried out by him and the steps taken thereon upto the stage of filing of the charge-sheet before the Court of competent jurisdiction have been briefly narrated in the foregoing paragraph Nos. 2(i) to 2(vi) and with a view to avoid the repetition and for the sake of brevity, we do not reproduce the same again here. In addition to what is stated in paragraph Nos. 2(i) to 2(vi) above, P.W. 22-API Nadgouda has stated about the consent given by the Appellants/accused persons in the presence of P.W. 19 for conducting their narco analysis

test. P.W. 22-API Nadgouda in his testimony has also stated that on 26th June 2006 he asked the arrested accused persons viz. Malubai, Manoj, Mahadev, Popat and Mangal as to whether they were ready to undergo narco analysis test and other related tests to which all of them showed their willingness. He accordingly prepared the panchanama in the presence of P.W. 19-Sanatan Bhosale. He thereafter sent a fax to the Forensic Science Laboratory, Bangalore through the Additional D.G.P. (Crime) for giving a date in respect of conducting the said test on accused persons. On 27th June 2006 he sent photocopies of the footprints which were found on the scene of offence and the footprints of the accused persons to the Chemical Analyzer to Forensic Science Laboratory, Pune for its comparison. That on 29th June 2006 he submitted an application in the Court of Judicial Magistrate, First Class, Miraj for granting permission to conduct the narco analysis test and other related tests on the accused persons. On 3rd July 2006 the said application was allowed. On 11th July 2006 the Judicial Magistrate, First Class, Miraj, passed order for handing over the custody of the accused to the police and directed the Superintendent of Jail. That on 12th July 2006 he took the custody of Manoj Gavade (accused No. 2) and Malubai Gavade (accused No. 1) and took them to Civil Hospital, Sangli for medical examination in respect of their fitness. On the same day the doctors examined both of them and issued the medical fitness certificate. After the intimation from Forensic Science Laboratory, Bangalore was received, P.W. 22-API Nadgouda took Manoj (accused No. 2) and Malubai (accused No. 1) to Forensic Science Laboratory, Bangalore after obtaining the permission from the Judicial Magistrate, First Class, Miraj. That between 24th July 2006 to 29th July 2006 all the said tests on Manoj (accused No. 2) and Malubai (accused No. 1) were performed at the Forensic Science Laboratory, Bangalore. That on 30th July 2006 he produced both the accused persons in the Court of Judicial Magistrate, First Class, Miraj and as per the order of the Court, the said accused persons were sent to Sangli jail. On 31st August 2006 he recorded the supplementary statement of P.W. 10-Ashok Gavade. That after completion of investigation, he submitted the charge-sheet in the Court as already stated herein above.

29. This witness was thoroughly cross examined by the Appellants. In his cross-examination a contradiction has been brought on record wherein this witness has stated that he did not make enquiry with villagers who were gathered at the spot. This is contrary to what has been stated by P.W. 1-Subhash Koli in his testimony. In his cross-examination this witness has admitted that the dog squad inspected the spot of incident. That nothing was revealed in the investigation of dog squad. The report pertaining to the investigation by dog squad was not filed on record. He has further admitted that in kitchen room of the spot of incident some utensils containing part of cooked food and vegetables, uncleaned dishes, pots, pans etc. were lying near the place of cooking. From the said situation he cannot tell as to whether more than one person had consumed the food on the earlier night or not. He admitted that he did not notice change in the colour of food and utensils which occurs in case of poisoning. He further admitted that no

sample of cooked food and the utensils was preserved for the purpose of chemical analysis, as he did not feel it necessary to do so. That a bottle of Brozit cough mentioned in the panchanama was not seized. That in the panchanama of spot of incident which is at Exhibit 68, the measurement of the right foot impression found in blood was not mentioned. That it is true to say that the finger print expert Mr. V.V. Inamdar and Mr. A.M. Shinde of L.C.B. Sangli had visited the spot of incident. The finger print expert had taken the photographs of the said foot impression. He has further admitted that the photographs of footprints are not filed in the present case. That the finger print expert had not given any report to him. That he had not recorded the statements of finger print expert Mr. V.V. Inamdar and Mr. A.M. Shinde. The wooden logs which are Articles A-1 and A-2 corresponding to Articles 18 and 19 in the spot panchanama which is at Exhibit 68 were lying outside the door. That in the panchanama or any other document he has not mentioned that he climbed on the top i.e. on the roof of the said spot and inspected the blood footprints. The tiles of the roof were found removed at two different places i.e. at the South West corner and another on the North West corner. He has further admitted that he did not prepare panchanama as to whether Paragon slipper which is at Sr. No. 9 mentioned in the said Panchanama which is at Exhibit 68 was fitted in the foot of any of the accused persons as well as any of the deceased persons. That the wooden logs i.e. article Nos. A-1 and A-2 which are corresponding to Sr. Nos. 18 and 19 as per the spot panchanama which is at Exhibit 68 are agricultural implements known as Dind. That in the panchanama at Exhibit 68 it is not mentioned that the specific portion on which there were bloodstains on the said wooden logs. That he did not prepare the panchanama of seizure of slipper which was lying at the spot of incident. That before 19th June 2006 he did not go to the spot where the said slipper was lying. That in the seizure panchanama of the clothes of accused persons, there is no mention about the affixing of wax seal on the said clothes. That in the panchanama which is at Exhibit 127, there is no mention about the wax seal. Lastly, he denied the suggestion put to him that he prepared and fabricated false documents and evidence favourable to the prosecution. Learned counsel for the Appellants has brought to our notice about the non-mentioning of this witness of the fact of sealing of the various articles which he had seized on the spot. Learned counsel for the Appellants therefore had submitted that a strong suspicion has been created in the testimony of this witness about the sealing of the articles which were seized on the spot and also during the course of investigation.

30. After taking into consideration the evidence on record, adduced by the prosecution, the following circumstances emerged on the basis of which the Trial Court has convicted the appellants.

i) Motive-The motive as put forth by the prosecution is that there was a dispute between accused No. 1 Malubai and deceased Balu Gavade on account of their agricultural land and about fetching of water from the well.

ii) Accused No. 1 Malubai Gavade called family members of deceased for the tea party on 14.6.2006 at about 8 p.m., which was hosted for returning of accused no. 4 Mahadev Gawade from the hospital. The tea given to the deceased persons was spiked with Dhattura seeds (Argemone Mexicana) powder to give sedative effect to deceased persons.

iii) Dhattura (Argemone Mexicana) seeds and powder were seized u/s 27 at the instance of the accused no. 1 from the house/courtyard of accused no. 4. That the accused nos. 1 and 4 were jointly occupying the said house belonging to accused no. 4.

iv) Blood-stains found on the clothes of accused nos. 2, 3 & 4.

v) The right leg slipper of accused no. 2 was found in the house of deceased and left leg slipper was found under the cot/charpai of accused no. 4 Mahadev.

vi) Accused No. 4 Mahadev had sent postcard to PW-10 i.e. son of deceased Shantabai asking him to meet him in the jail. An extra judicial confession given by accused no. 4 to PW-10 thereby confessing the act/crime.

31. Learned counsel appearing for the Appellants and the learned APP did not dispute about the aforesaid circumstances which are for the determination of this Court.

32. The present case is solely based on circumstantial evidence and the circumstances which have been put forth by the prosecution have been briefly stated herein above in paragraph No. 30.

33. It is the settled position of law that in a case of circumstantial evidence the circumstances on which the prosecution relies must be consistent with the sole hypothesis of the guilt of the accused. In case of resting on circumstantial evidence, it is incumbent for the prosecution to prove each and every circumstance on which it proposes to rely. The circumstances so proved should be of conclusive nature i.e. they should have a definite tendency of implicating the accused. The circumstances so established should form a complete chain which should exclude every hypothesis of the innocence of the accused and unquestionably point towards the guilt of the accused. In other words the circumstances should be conclusive i.e. accused and the accused alone has committed the crime.

34. In a case of circumstantial evidence, the judgment remains essentially inferential. Inferences are drawn from established facts, as the circumstances lead to particular inferences. The Court must draw an inference with respect to whether the chain of circumstances is complete, and when the circumstances therein are collectively considered, the same must lead only to the irresistible conclusion, that the accused alone is the perpetrator of the crime in question. All the circumstances so established must be of a conclusive nature, and consistent only with hypothesis of the guilt of the accused. If the circumstances proved in case are consistent either with innocence of accused or with his guilt then the

accused is entitled to the benefit of doubt. When it is held that a certain fact has been proved, then the question that arises is whether such a fact leads to the inference of guilt on the part of the accused person or not, and in dealing with this aspect of the problem, benefit of doubt must be given to the accused, and a final inference of guilt against him must be drawn only if the proved fact is wholly inconsistent with the innocence of the accused, and is entirely consistent with his guilt. An adverse inference can be drawn against the accused only and only if the incriminating material stands fully established, and the accused is not able to furnish any explanation for the same. However, the accused has the right to remain silent, as he cannot be forced to become a witness against himself.

35. Let us now analyze the evidence on record put forth against the Appellants.

The circumstance No. 1 that is the motive which mainly revolves around Accused No. 1-Malubai. P.W. 9-Ashok Jatkari, P.W. 10-Ashok Gavade, the son of deceased Shantabai Gavade and P.W. 11-Amol Waghmode, the husband of Jayashree Waghmode and son-in-law of deceased Balu Gavade are the witnesses who have deposed about the motive involved in the present crime. These witnesses have stated that there was a dispute going on between deceased Balu Gavade and accused No. 1-Malubai on account of their agricultural land and for fetching the water from the well. P.W. 10-Ashok Gavade in addition to the aforesaid motive has also stated that accused No. 1-Malubai had adopted Manoj (accused No. 2), the son of Mahadev (accused No. 4). Deceased Balaram Gavade @ Balu was insisting Malubai (accused No. 1) to adopt his son Sunil. P.W. 11-Amol Waghmode has also added in his testimony that the said dispute between Malubai (accused No. 1) and deceased Balu Gavade had taken place on account of taking water from the well and the same had also occurred while using the road for taking drinking water from the well. This was the motive which has been stated to have been the cause for the commission of the murder of the deceased persons basically by Malubai (accused No. 1) and other accused persons in connivance with each other.

It is to be noted here that in the cross-examination P.W. 10-Ashok Gavade has admitted that till the date of incident there was no dispute in between his family and the family of Mahadev (accused No. 4). P.W. 13-Narayan Jadhav who is neighbour of the Appellants and deceased Balu Gavade in his cross-examination has admitted that accused Mahadev, Manoj, Popat, Mangal were having good relations with the deceased persons. P.W. 14 Shamrao Naik, the Police Patil from the village Laxmiwadi and was holding additional charge of village Arag, an independent witness hailing from the vicinity of the appellants and deceased persons, in his cross-examination has admitted that since last so many years there was partition in between Malubai (Accused No. 1), Mahadev (Accused No. 4) and Balu Gavade (deceased) and they were residing separately. That they were cultivating their lands separately. Taking into consideration the admissions given by P.W. 10-Ashok Gavade, the son of deceased Shantabai, P.W. 13-Narayan Jadhav, the neighbour of the Appellants and the deceased persons and P.W. 14

Sharmrao Naik, the Police Patil, that the Appellants and the deceased persons were having good relations amongst themselves, in our considered opinion, the motive as propounded by the prosecution falls flat and the circumstance of motive in the present crime is not proved by the prosecution.

36. The circumstance Nos. 2 and 3 mentioned above in paragraph No. 30 can be dealt with jointly as these two circumstances are interrelated. The prosecution has put forth the circumstance of the tea party which was hosted by Malubai (accused No. 1) on 14th June 2006 at about 8.00 p.m., for returning of Mahadev (accused No. 4) from the hospital. It was alleged that the tea given to the deceased persons was spiked with Dhattura (*Argemone Mexicana*) seeds powder to give sedative effect to the deceased persons. The Dhattura seeds and its powder were seized u/s 27 at the instance of Malubai (accused No. 1) from the house/courtyard of Mahadev (accused No. 4). That accused Nos. 1 and 4 were jointly occupying the said house belonging to Mahadev (accused No. 4). In this behalf the prosecution has examined P.W. 7-Ashok Shinde who has deposed that as per his routine on the next day (i.e. 14th June 2006), he had been to Gavade Vasti at about 8 to 8.30 p.m. when Malubai (accused No. 1), Mahadev (accused No. 4), Manoj (accused No. 2) and Popat (accused No. 3) were sitting in the courtyard of Malubai (accused No. 1). In his presence Malubai (accused No. 1) asked Manoj (accused No. 2) to call Balu Gavade's family. Then Balu Gavade, Balu's wife, Sunil, Balu Gavade's another daughter and one married daughter came at the house of Malubai (accused No. 1). P.W. 13-Narayan Jadhav and other relatives also came there. Malubai (accused No. 1) offered tea to the persons who came from the family of Balu Gavade and gave milk to Raju Gavade. She also gave tea to other persons. In his presence all those persons left the house of Malubai (accused No. 1) at about 9.15 p.m. to 9.30 p.m. On the next day morning he came to know about the incident.

37. It is important to note here that, in the list of persons named by this witness i.e. P.W. 7-Ashok Shinde, who had joined the tea party, the name of deceased Shantabai Gavade is not at all reflected. However, in the Chemical Analyzer's report pertaining to viscera of Shantabai Gavade, the traces of *Argemone Mexicana* seeds and ethyl alcohol were found. P.W. 16-Dr. Archana Sawant who had conducted the autopsy of deceased Shantabai had stated the said fact in her testimony.

P.W. Nos. 15, 16, 17 and 18 are the medical officers/doctors who have conducted the autopsy of deceased Sunil, Shantabai, Chaya, Jayashree, Balu and Shirmabai respectively and the Forensic Science Laboratory's reports of the viscera of these deceased persons are at Exhibit Nos. 154 to 161 on record. In the Chemical Analyzer's Report of these persons, the traces of *Argemone Mexicana* have been found by the Forensic Science Laboratory. P.W. 16-Dr. Archana Sawant in her cross-examination has admitted that *Argemone Mexicana* has bitter taste and due to its consumption the first reaction would be dryness in throat. Dimness of vision, vomiting and headache are the symptoms of consumption of *Argemone*

Mexicana. She has further admitted that any consumption of poison including Argemone Mexicana would result into restlessness of the person. That during the postmortem examination of the dead body of Shantabai, she did not notice any vomitus on the sari or blouse of the said deceased. P.W. 17-Dr. Sidharth Darbare in his cross-examination has admitted that he did not notice any abnormal smell while effecting the postmortem of dead body of Chhaya. He has further admitted that Hypnotic is the special characteristic of Argemone Mexicana. He has also admitted that if Argemone Mexicana is consumed, there would be symptoms of breathlessness, vomiting and dryness. P.W. 18-Dr. Narendra Pawar has admitted in his cross-examination that in case of consumption of Argemone Mexicana, there would be symptom of nausea, vomiting, expectorant, laxative and sedative effects. He has further admitted that approximately within 2 to 3 hours of consumption of Argemone Mexicana seeds, the symptoms will start.

P.W. 22-Suhas Nadgouda in his cross-examination has admitted that when he visited the spot of incident i.e. where the dead bodies of the deceased persons were found, in the kitchen room of the spot of incident some utensils containing part of cooked food and vegetables, uncleaned dishes, pots, pans etc. were lying near the place of cooking. He has further admitted that no sample of cooked food from the utensils was preserved for the purpose of chemical analysis, as he did not feel it necessary to do so. He has further admitted that a bottle of Brozit cough which is mentioned in the panchanama was not seized.

38. It is the further prosecution case that at the instance of Malubai (accused No. 1), discovery of Dhattura plant (Argemone Mexicana), its flowers and seeds was made as contemplated u/s 27 of the Evidence Act in the presence of P.W. 8-Somnath Chavan. P.W. 8-Somnath Chavan in his testimony has stated that in pursuance of the memorandum statement made by Malubai (accused No. 1) which is at Exhibit 74, she led the police to village Arag at Gavade Vasti and pointed out a house which was facing towards East and took the police and panch witnesses in the field which was at the backside of the house. She pointed out to the plant of Dhattura (Argemone Mexicana). The police seized the entire trees by effecting panchanama which is at Exhibit 75 (dated 21st June 2006). As P.W. 4-Manik Bhanuse, a panch witness to the panchanama which is at Exhibit 127 which was effected at the instance of Mahadev (accused No. 4), has turned hostile, the said panchanama which is at Exhibit 127 has been proved by P.W. 22-API Nadgouda. By the said panchanama the police seized a transparent plastic bag containing the flowers of Dhattura (Argemone Mexicana) and its seeds from the open space in the courtyard which was near the Basil tree. It is the further case of the prosecution that the powder of the seeds from Dhattura (Argemone Mexicana) plant which was discovered at the instance of Malubai (accused No. 1) and the seeds which were discovered at the instance of Mahadev (accused No. 4) were mixed with tea which was given to the family members of Balu Gavade.

After carefully scrutinizing entire evidence on record we find that there is no evidence at all to connect the link between the alleged administration of Dhattura

(Argemone Mexicana) powder in the tea which was allegedly given to the family members of Balu Gavade and the finding of traces of the said powder in the viscera of the deceased persons, including, surprisingly of deceased Shantabai. As the prosecution has utterly failed to prove the connecting link about the traces of Argemone Mexicana seeds from the vessels in which either the tea was prepared or from the remains of the food which was found in the house of deceased Balu Gavade. The investigating agency has not taken any pains to connect the said vital link wherein it can be safely said that Malubai (accused No. 1) had in fact mixed the said Dhattura powder in the tea which was given to Balu Gavade. This finding is also coupled with the admissions given by the Medical Officers in their cross-examination which clearly reveals that after the consumption of Argemone Mexicana, the immediate reactions of the same on any human being were not noticed by any of the witnesses. It further appears from the evidence on record that the deceased persons after consuming the tea at the house of Malubai (accused No. 1) went to the house of Balu Gavade and had their dinner. As stated above, as there is no evidence at all to connect between Dhattura (Argemone Mexicana) powder in tea and viscera, merely on the basis of the evidence of P.W. 7-Ashok Shinde that Malubai (accused No. 1) gave tea to the family members of deceased Balu Gavade, the same cannot be relied upon in the absence of any cogent and convincing evidence. We also find that the evidence of P.W. 7-Ashok Shinde is not at all reliable and trustworthy.

39. The circumstance No. 4 is that the blood-stains were found on the clothes of accused No. 2-Manoj, accused No. 3-Popat @ Nitesh Mane and accused No. 4-Mahadev Gavade. P.W. 22 A.P.I. Shri Suhas Nadgouda in his cross-examination has admitted that in the seizure panchanama of clothes of accused, there is no mention about the sealing of the said articles. The panchanama at Exhibit 127 under which the towel of accused no. 4, a left leg slipper having some bloodstains and Dhattura (Argemone Mexicana) flowers and seeds were seized at the instance of accused No. 4-Mahadev, discloses that at the time of said seizure no sealing was effected on the spot, of the said articles. The said panchanama is absolutely silent about sealing of the said Articles on the spot. Exhibit 127 is drawn/effected in the presence of P.W. 14 Shamrao Naik. It is also important to note that the panchanama of scene of offence which is at Exhibit 68 is also absolutely silent about sealing of the said 23 articles mentioned therein on the spot i.e. at the time of seizure of the said articles. The said Exhibit 68 i.e. scene of offence panchanama is drawn in the presence of P.W. 3 Santosh. P.W. 3 in his cross-examination has admitted that he did not know whether there was wax-seal put by the police at the time of seizure of the said articles.

The learned Counsel appearing for the appellants relied on the judgment of the Supreme Court in the case of Amarjit Singh Vs. State of Punjab reported in IV (1993) CCR 486 (SC), wherein the Supreme Court has held that the non-sealing of the articles at the spot is a serious infirmity because the possibility of tampering over the said articles cannot be ruled out. The learned Counsel appearing for the appellants further relied upon the two judgments of Division

Bench of this Court in the case of Ashok Premaji Nirbhawane Vs. State of Maharashtra in Criminal Appeal No. 886 of 2012 and Rajaram Limbaji Babar Vs. The State of Maharashtra in Criminal Appeal No. 899 of 2005, wherein the same view was followed. Thus, after taking into consideration the fact that there is no evidence in respect of sealing of the clothes of the accused persons and the other articles, no reliance can be placed on the consequential findings of the Chemical Analyzer. We find that there is also no evidence on record to show that the seized articles were properly sealed and those were remained in sealed condition till they were sent to the Chemical Analyzer. Since there is no proof that the articles were sealed and remained in sealed condition till they were sent to the Chemical Analyzer, the evidence in respect of recovery and consequential findings of the Chemical Analyzer cannot be relied upon. According to us, therefore, the evidence in respect of discovery as well as finding of those articles stained with blood by the Chemical Analyzer will have to be left out from consideration, as the prosecution has not ruled out the possibility of articles, could have been tampered with on account of absence of any evidence regarding sealing of the articles.

40. The Circumstance No. 5, as mentioned in para-30, according to us is a far stretched circumstance without there being any cogent and substantive evidence on record. We have reached to the aforesaid conclusion on two counts. Firstly, the place of finding of right leg slipper as has been mentioned by various witnesses, differs from witness to witness and there is vast variance about its actual location. P.W. 7 Ashok Shinde in his testimony has stated that he found one right leg slipper lying in the courtyard in the house of Balu Gavade (deceased). P.W. 10 Ashok Gavade, son of deceased Shantabai Gavade in his testimony has stated that he saw one blue colour slipper lying in the backside of the door of the house of Balu Gavade. P.W. 11-Amol Waghmode, husband of deceased Jayashree Waghmode and son-in-law of deceased Balu Gavade in his testimony has stated that the slipper of right leg was found lying near the dead body of Balu Gavade. It is pertinent to note here that the said slipper is not shown to this witness during the course of recording of his evidence. P.W. 14 Shamrao Naik in his cross-examination has admitted that the police seized slipper which was found near the house of Balu Gavade. Thus, it is apparent that there is material contradictions pertaining to the place of finding of right leg slipper allegedly of accused no. 2 Manoj Gavade. Thus, the material contradictions pertaining to the place of finding of the right leg slipper creates strong doubt about its real presence at the spot of offence in the mind of this court.

The second count for which we refrain ourselves from relying upon the circumstance of finding of left leg slipper in the courtyard of accused No. 4 Mahadev is, the left leg slipper was found after a gap of 4 days from the courtyard of accused no. 4 Mahadev from below cot/charpai. The date of incident i.e. date of finding of dead bodies is 15.6.2006 and the seizure panchanama of left leg slipper which was seized from the courtyard of accused no. 4 Mahadev is

dated 19.6.2006. P.W. 10 Ashok Gavade, the son of Shantabai Gavade, in his cross-examination has admitted that when he saw the said slipper below the cot at the first instance, the police was not with him. He has further admitted that he did not brought to the notice of the police that one slipper was lying below the cot in the courtyard of Mahadev Gavade. He has further admitted that he did not find it necessary to state about the said slipper. He has further admitted that at his own accord he did not state about the suspected persons to the police. P.W. 11 Amol Waghmode in his cross-examination has admitted that he did not show the slipper which was lying below the cot in front of the Mahadev Gavade (accused No. 4) to the Police. He has further admitted that, as nothing found suspicious to him he did not bring the said slipper to the notice of the police. P.W. 22 Investigating Officer Mr. Nadgouda in his cross-examination has admitted that he had not prepared any panchanama as to whether Paragon slipper which is at Serial no. 9 was fitting in the foot of any of the accused persons or in the foot of any of the deceased persons. The Investigating Officer did not take efforts to ascertain whether the slipper of left leg is fitting to the size of accused no. 2 or any of the accused persons. It appears that there is no investigation from this point of view. Thus, after taking into consideration the seizure of the said left leg slipper found in the courtyard of accused no. 4 Mahadev after 4 days and the testimony of P.W. 10 Ashok Gavade, P.W. 11 Amol Waghmode and PW. 22, Investigating Officer, we are of the aforesaid considered opinion, that the circumstance of finding of one right leg slipper on the spot of incident and the seizure of left leg slipper after 4 days from the courtyard of accused no. 4 Mahadev is far stretched circumstance for basing the conviction of any of the accused persons in the preset case.

41. This brings us to the last circumstance put forth by the prosecution as a incriminating circumstance against the accused no. 4 Mahadev. The said circumstance No. 6 is mentioned in para-30 above. It is the case of the prosecution that accused no. 4 Mahadev when was in judicial custody, had sent a postcard dated 9th August 2006 to P.W. 10 Ashok Gavade i.e. the son of deceased Shantabai asking him to meet accused no. 4 Mahadev in the jail. After P.W. 10 went to meet accused no. 4 Mahadev in jail, Mahadev gave an extra-judicial confession about his act/crime. P.W. 10 Ashok Gavade in his testimony has stated that Mahadev Gavade (accused No. 4) had sent a letter dated 9.8.2006 to him. In the said letter, it was mentioned that all the conspiracy was hatched by Malubai (accused no. 1) and he (accused No. 4) would narrate all the facts to P.W. 10 when P.W. 10 would come to meet accused no. 4 in jail. After receiving the said letter, P.W. 10 along with Kisan Gavade went to Sangli to meet Mahadev (accused no. 4) in jail. They met him (accused No. 4) in jail. On enquiry with Mahadev (accused No. 4), he told them that "this was the conspiracy of Malubai (accused no. 1) and persons from their kinship". Mahadev (accused No. 4) also stated that "he had committed mistake". The prosecution has relied on this statement as an extra-judicial confession given by accused No. 4-Mahadev.

The plain reading of the aforesaid alleged extra-judicial confession demonstrates

that the said statement is an exculpatory statement. The statement if read as a whole, is an exculpatory character. It does not suggest or prove the commission of any offence under the Penal Code by Mahadev. It not only exculpates the accused No. 4 Mahadev from the commission of an offence but shifts the burden of crime on Malubai (accused No. 1). According to us that does not amount to confession and is thus inadmissible in evidence. The Privy Council in the case of AIR 1939 47 (Privy Council) has held that the word "confession" as used in the Evidence Act cannot be construed as meaning a statement by an accused suggesting the inference that he committed the crime. A confession must either admit in terms the offence, or at any rate substantially all the facts which constitute the offence. A statement that contains self-exculpatory matter cannot amount to a confession, if the exculpatory statement is of some fact, which if true, would negative the offence alleged to be confessed.

42. The learned Counsel appearing for the appellants has relied upon the judgment of the Supreme Court in the case of *Palvinder Kaur Vs. The State of Punjab* (Rup Singh-Caveator), The Supreme Court, after taking into consideration the ratio laid down by the Privy Council in the case of *Pakala Narayanswami* (Supra) has reiterated the principles led down in the said judgment. As stated above, a plain reading of the alleged extra-judicial confession given by Mahadev (accused No. 4) is a clear exculpatory confession which cannot be taken into consideration for sustaining the conviction of the appellants.

43. After taking into consideration the entire evidence of the prosecution witnesses, the cumulative effect of the circumstances, which were put forth by the prosecution for establishing the guilt of the appellants is that the same are not beyond the shadow of doubt. That the test requires the exclusion of other alternative hypothesis that the appellants only are responsible for the commission of the said crime, cannot be said from the evidence on record, that it complies the test of proof beyond reasonable doubt.

44. After scrutinizing the entire evidence on record minutely, we are of the opinion that the evidence adduced by the prosecution is not cogent, convincing and sufficient to hold that the accused are the only persons who are responsible for the commission of the present crime. The chain of circumstances as put forth by the prosecution, in our opinion, is incomplete and would not lead to the irresistible inference that the appellants only have committed the crime. After giving our earnest consideration to the entire evidence on record, we are of the opinion that the appellants are entitled for the benefit of doubt and we therefore extend the benefit of doubt to the appellants.

45. Accordingly all the aforesaid Criminal Appeals are allowed, and the conviction and sentence of the appellants is hereby quashed and set aside and the appellants are acquitted of the offences with which they are charged and convicted. Fine, if any paid by the appellants, be refunded to them. Since the appellants are in jail, they be released forthwith if not required in any other case.